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8 UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

11
12 ZENAIDA E. QUICHO, individually
and on behalf of all others similarly
13 situated,

14 Plaintiff,

15 v.

16 MANN BRACKEN, LLC; DOUG
MANN; EDWARD REILLY,

17 Defendants.

) CASE NO. C 07 3478 BZ

) **DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
DISMISS**

) [F.R.C.P. 12(b)(6)]

) DATE: September 19, 2007

) TIME: 10:00 a.m.

) DEPT.: Courtroom "G"

19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:


20 PLEASE TAKE NOTICE that on September 19, 2007 at 10:00 a.m., or as soon
21 thereafter as the matter may be heard, in Courtroom "G" of the above-entitled Court,
22 Defendants MANN BRACKEN, LLC, DOUG MANN and EDWARD REILLY
23 (collectively, "Defendants") will and hereby do move this Court for an Order,
24 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the
25 Complaint in its entirety for failure to state a claim upon which relief can be granted.
26 The motion will be made on the grounds that the letter attached as Exhibit "A" to
27 Plaintiff's Complaint only contains truthful and accurate information concerning the
28

1 terms of an offer to settle a debt, and that as a matter of law, the letter does not
2 amount to a "false, deceptive or misleading misrepresentation in connection with the
3 collection of any debt" within the meaning of the Fair Debt Collection Practices Act.
4 The Motion will be based upon this Notice of Motion and Motion, the accompanying
5 Memorandum of Points and Authorities in Support of the Motion, upon all the
6 records on file in this action, and upon such other and further evidence and argument
7 as the Court may permit in connection with the Motion.
8

9 DATED: August 13, 2007

STEPHEN H. TURNER, Esq.
ALISHA M. LEE, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP

10
11
12 By



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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this action, Plaintiff, ZENAIDA E. QUICHO ("Plaintiff") essentially asks this Court to take the Federal Fair Debt Collection Practice Act ("FDCPA") and turn the entire statute upside down. Congress passed the FDCPA in an effort to eliminate abusive debt collection practices, including the use of "false, deceptive or misleading" representations by debt collectors, but Plaintiff seeks to hold Defendants MANN BRACKEN, LLC, DOUG MANN and EDWARD REILLY (collectively, "Defendants") liable under the Act based upon collection letters that contain only truthful and straightforward statements.

Accordingly, Plaintiff has failed to state a claim upon which relief can be granted, and Defendants respectfully request, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, that this Court issue an Order dismissing the Complaint, with prejudice.

II. ALLEGATIONS OF THE COMPLAINT

Plaintiff's entire case is based upon the contents of one collection letter that Defendants allegedly sent on May 7, 2007, which is attached as Exhibit "A" to the Complaint. Plaintiff contends that Defendants' letter is contradictory and confusing (Complaint, ¶ 12) and falsely implies that the debt in question has been reviewed by an attorney (despite the fact that no attorney signed the letter and no attorney's name even appeared on the letter) when, in fact, no attorney had. (Complaint, ¶¶ 14-16)

In the caption of the letter, it recites:

"Name of creditor: Chase Bank USA, N.A."

Plaintiff contends that Defendants' collection notice is contradictory and confusing because in the second paragraph Defendants state:

"The original contract you entered into with Chase Bank
USA, N.A. or with the predecessor or assignor of Chase

1 Bank USA, N.A., provides for the resolution of claims or
2 disputes by binding arbitration.” (*Complaint*, ¶12.)

3 With regard to the second allegation, plaintiff alleges that merely because the
4 letter is on the letterhead of a law firm (which is not surprising because the letter was
5 sent by law firm) it implies the debt in question has been reviewed by an attorney.

6 Based upon these allegations, Plaintiff makes two claims for relief. The first
7 claim for relief, for violation of the Federal FDCPA, alleges that Defendants’
8 collection letter, Exhibit “A” to the Complaint, did the following:

9 1. “[M]ade false, deceptive and misleading misrepresentations as to the
10 character, amount, or legal status of the debt, i.e., Defendants’ entitlement to
11 arbitration” in violation of 15 U.S.C. §1692e(2)(A). (*Complaint*, ¶18.)

12 2. “[F]alsely represent[ed] that the collection letter is from an attorney, as
13 no attorney was directly and personally involved in reviewing Ms. Quicho’s file and
14 sending the collection letter to Ms. Quicho” in violation of 15 U.S.C. §1692e(3).
15 (*Complaint*, ¶19.)

16 3. “[T]hreatened to arbitrate the claim, when the threat was of an action
17 that cannot be legally taken” in violation of 15 U.S.C. §1692e(5). (*Complaint*, ¶20.)

18 4. “[U]sed...false and deceptive means to collect a debt, by failing to
19 provide the validation notice required by 15 U.S.C. §1692g.” (*Complaint*, ¶21.)

20 The second claim for relief, for violation of the Rosenthal Act incorporates by
21 reference each of those allegations, and alleges further that Defendants
22 “communicat[ed] with a debtor in the name of an attorney when no attorney has
23 approved or authorized the communication.” (*Complaint*, ¶24.)

24 25 **III. CONGRESS PASSED THE FDCPA TO ELIMINATE “ABUSIVE”** 26 **COLLECTION PRACTICES**

27 In analyzing Plaintiff’s claim, it is crucial to briefly review the reasons why
28 Congress passed the FDCPA. The Act was not passed in an effort to prevent

1 dissemination of truthful and accurate information, or to discourage the settlement of
2 valid debts. Rather, the statute was enacted based upon abundant evidence of the use
3 of abusive, deceptive and unfair debt collection practices by debt collectors. See 15
4 U.S.C. §1692. The Act states that its purpose is “to eliminate abusive debt collection
5 practices by debt collectors.” 15 U.S.C. §1692e. Debt collectors are prohibited from
6 using “any conduct the natural consequence of which is to harass, oppress or abuse
7 any person” while collecting debts, threats of violence, the use of obscene language
8 and other acts of willful conduct are prohibited. See 15 U.S.C. §1692d.

9 The Ninth Circuit has noted that the “Act is designed to protect consumers
10 who have been victimized by unscrupulous debt collectors, regardless of whether a
11 valid debt actually exists.” See Baker v. GC Services Corp., 677 F.2d 775, 777 (9th
12 Cir. 1982). The legislative history of the Act makes it clear that “Congress designed
13 the Federal Act to eliminate the recurring problem of debt collectors lending to the
14 wrong person or attempting to collect debts which the consumer has already paid.”
15 S. Rep. No. 382, 95th Cong., 2d.Sess. 4, reprinted in 1977 U.S. Code Cong. & Admin.
16 News 1695, 1699. See also Swanson v. Southern Morgan Credit Service, 869 F.2d
17 1222, 1225 (9th Cir. 1999).

18 Importantly, Congress also specified that the Act was designed to “insure that
19 those debt collectors who refrain from using abusive debt collection practices are not
20 competitively disadvantaged.” See 15 U.S.C. §1692(e).

21 In short, the FDCPA was designed to address the very serious problem caused
22 by debt collectors who resort to harassment, abuse, oppression, deception or false or
23 misleading misrepresentations in connection with their collection efforts.
24 Defendants respectfully suggest that it is important to keep the goals of Congress in
25 mind when evaluating the accurate and extremely innocuous settlement letter that
26 gives rise to this suit.

27 ///

28 ///

1 **IV. DEFENDANTS' COLLECTION LETTER DOES NOT FALSELY**
 2 **REPRESENT THAT THE COLLECTION LETTER WAS FROM AN**
 3 **ATTORNEY**

4 **A. Defendants' Letter Was Not Signed By an Attorney**

5 Plaintiff contends that "Defendants' collection letter, Exhibit A to the
 6 Complaint, violated 15 U.S.C. § 1692e(3) by falsely representing that the collection
 7 letter is from an attorney, as no attorney was directly and personally involved in
 8 reviewing Ms. Quicho's file and sending the collection letter to Ms. Quicho."
 9 *Complaint*, ¶19. Plaintiff contends that the least sophisticated consumer would
 10 believe the notice letter at issue came from an attorney because the letter was sent "on
 11 law firm letterhead implying the file has been reviewed by an attorney." *Complaint*,
 12 ¶16.

13 The FDCPA does not extend to every bizarre or idiosyncratic interpretation of
 14 a collection notice, but does reach a reasonable interpretation of a notice by even the
 15 least sophisticated consumer. Clomon v. Jackson, 988 F.2d 1314, 1319 (2nd Cir.
 16 1993). Moreover, even the least sophisticated consumer "can be presumed to possess
 17 a rudimentary amount of information about the world and a willingness to read a
 18 collection notice with some care." Greco v. Trauner, Cohen and Thomas, L.L.P., 412
 19 F.3d 360, 363 (2nd Cir. 2005).

20 Based solely upon the fact that Defendants sent (not surprisingly) letters on its
 21 letterhead (again, not surprisingly) Plaintiff alleges that Defendants violated 15
 22 U.S.C. §1692e(3) because Defendants made the false, deceptive and misleading
 23 misrepresentation that the letter was from an attorney. The obvious flaw in Plaintiff's
 24 argument is that *the letters do not so state!* As a matter of law, the fact that a law
 25 firm sends letters on its letterhead does not, in and of itself, constitute a violation of
 26 the FDCPA.

27 Courts have held that notices printed on law firm letterhead are not deceiving,
 28 even if they were also signed by an attorney. Rumpler v. Phillips & Cohen

1 Associates Ltd., 219 F.Supp.2d 251, 257 (E.D.N.Y. 2002). In Rumpler, the Court
 2 held that the least sophisticated consumer would not be deceived by a collection letter
 3 that was on law firm letterhead ("Phillips & Cohen Associates, Ltd.") and was signed
 4 by an attorney "Adam S. Cohen, Esq., Executive Vice President." The court found
 5 that the use of the title "Executive Vice President," coupled with the fact that the
 6 notice did not say "Attorney-at-Law" or "General Counsel," made the notice non-
 7 deceiving. Id.

8 Under Rumpler, it is obvious that the instant letter was not deceiving, because
 9 the instant letter was not signed by an attorney. Indeed, it was not signed by anyone
 10 bur, rather, on bore the "MANN BRACKEN LLC." Because there was no attorney
 11 signature on the letter, the least sophisticated consumer could not reasonably interpret
 12 the letter as having been issued by an attorney.

13 **B. Defendants' Letter Did Not Misrepresent the Level of Attorney**
 14 **Involvement**

15 The decision in Greco v. Trauner, Cohn & Thomas, L.L.P., 412 F.3d 360 (2nd
 16 Cir. 2005) is on point because the Greco plaintiff made the same claim as Plaintiff in
 17 the instant action, to wit: "an attorney cannot send a collection letter without being
 18 meaningfully involved as an attorney within the collection process." Id. at 363. The
 19 Court rejected the Greco plaintiff's claim, noting that it "rests on a misunderstanding
 20 of the FDCPA's requirements, and of our prior explications of that statute. Although,
 21 a collector cannot, consistent with FDCPA, *mislead* the debtor regarding meaningful
 22 'attorney' involvement in the debt collection process,." Id. at 364, the Court
 23 continued:

24 "In fact, attorneys can participate in debt collection in any
 25 number of ways, without contravening the FDCPA, so long
 26 as their status as attorneys is *not misleading*. Put another
 27 way, our prior precedents demonstrate that an attorney can,
 28 in fact, send a debt collection letter without being

1 meaningfully involved as an attorney within the collection
 2 process, so long as that letter includes *disclaimers* that
 3 should make clear even to the 'least sophisticated
 4 consumer' that the law firm or attorney sending the letter is
 5 not, at the time of the letter's transmission, acting as an
 6 attorney." Id.

7 In Greco, the Court found that there was no violation because "[t]he letter was
 8 not signed by any individual attorney" and included language that the law office
 9 represented the creditor and that no attorney with the firm had personally reviewed
 10 the particular circumstances of the account. Id. at 362, 365. The Court found that the
 11 letter was not false and deceptive, and that defendants had not used any "false,
 12 deceptive or misleading representation or means of connection with the collection of
 13 any debt (15 U.S.C. § 1692e, including the "false representation or implication that
 14 any individual is an attorney or that any communication is from an attorney." (15
 15 U.S.C. § 1692e(2)).

16 Just as in Greco, the language used by Defendants does not, as a matter of law,
 17 misrepresent the level of attorney involvement. The instant notice clearly states that
 18 it is from a debt collector, not an attorney: "**This communication is from a debt**
 19 **collector.** This is an attempt to collect a debt, and any information obtained will be
 20 used for that purpose." [emphasis added] In this case, the letter clearly does not
 21 represent to have been from an attorney, and thus there is no false implication that an
 22 attorney formed an opinion or was meaningfully involved.

23 Plaintiff alleges that the letter was false, deceptive and misleading because it
 24 implied it was from an attorney when, in fact no attorney had any meaningful
 25 involvement in reviewing Plaintiff's file or discussing resolution of the matter.
 26 *Complaint*, ¶ 19. The disputed language states:

27 "The above referenced account has been referred to this
 28 firm for collection.... If we are unable to reach satisfactory

1 arrangements, the filing of an arbitration claim will be
2 evaluated.”

3 First, Defendants note that no court throughout the country has held that a letter
4 which truthfully represents that a law firm has been retained to collect a debt, and
5 does not represent to be signed by an attorney, is, by itself, a violation of the FDCPA.
6 This absence of authority, in and of itself, mandates that Defendants’ motion be
7 granted.

8 In fact, a court has ruled that a letter which is, in substance, the same as the
9 letters in question in this case, did *not* violate the FDCPA. In Mizrahi v. Miller &
10 Malone, P.C. U.S. District Lexis 22145, 19 (E.D.N.Y 1999), the District Court there
11 ruled that a letter which bore the mechanical signature of an attorney did not violate
12 the FDCPA. In rejecting Plaintiff’s citation of Clomon v. Jackson 988 F.2d 1314 (2nd
13 Cir. 1993), the Court noted that the letter was on the firm’s own letterhead (as is the
14 case with the letter upon which Plaintiff’s Complaint is based). The Court went on to
15 note that:

16 “Nor is the language in the letter sent by Miller & Malone of
17 the kind that could suggest that an attorney had individually
18 reviewed the file. . . The letter that Plaintiff received in this
19 case merely states that Miller & Malone represents NYHQ,
20 which is a true statement and that ‘legal action may follow if
21 you fail to respond,’ another statement proven to be accurate
22 since the computer record reflects that Miller & Malone was
23 prepared to sue.” Mizrahi, supra.

24 The Court further noted:

25 “There is no language that implies that the attorney
26 personally reviews every file completely. The letter simply
27 states that ‘This office represents the client,’ and this
28 statement allows for use of legal assistance without violating

1 § 1692e(3). Mizrahi, 1999 U.S. Dist. Lexis 22145 at p. 15.^{1/}

2 Admittedly, the decision in Mizrahi and the authority upon which that decision
3 was based is, obviously, not controlling, but it is instructive. In this case, Defendants
4 *never* represented that the letter was from an attorney. Rather, it simply stated,
5 truthfully, that Mann Bracken, LLC had been retained. Further, unlike the letter in
6 Mizrahi, the letter in the instant case was *not signed by anyone*, much less an attorney.

7 Plaintiff has pled no facts to support her claim that Defendants falsely
8 misrepresented that the letter was from an attorney and therefore her claim must fail.

9
10 **V. DEFENDANTS' LETTER CLEARLY IDENTIFIED THE NAME**
11 **OF THE CREDITOR AND WAS NOT CONFUSING OR**
12 **CONTRADICTORY AS TO THE IDENTITY OF THE CREDITOR**

13 The FDCPA requires debt collectors to send consumers a written validation
14 notice containing certain information within five days of the initial communication,
15 including "the name of the creditor to whom the debt is owed." See 15 U.S.C.
16 §16192g(a)(2).

17 Plaintiff has *no basis for her contention* that "defendant fails to identify the
18 name of the creditor to whom the debt is owed, thereby violating 15 U.S.C. §
19 1692g(a)(2). *Complaint*, ¶12. The caption of Defendants' letter clearly states: "*Name*
20 *of creditor*: Chase Bank USA, N.A." [emphasis added] The letter clearly and
21 unequivocally identifies Chase Bank USA, N.A. as the creditor. The identification of
22 the creditor was not obscured or hidden. On the contrary, it appeared in the *caption* of
23 the letter, which made for easy viewing by Plaintiff.

24 The validation notice required by the FDCPA must be presented in a non-

25
26 ^{1/}The Court cited Golerg v. Winston & Morrone, P.C. No. 95 Civ. 9282, 1997 U.S.
27 Dist. Lexis 3521 at 20 (S.D.N.Y. 1997) which noted the absence of "any authority that is
28 misleading for a non-attorney law firm employee to do the work of 'the firm.'" In addition
the Court in Mizrahi cited Danielson v. Hicks, U.S. Dist. Lexis 2221, 94 Civ. 1052 (1995
W.L. 767290 (D. Minn. 1995) which ruled that it was not false or misleading under §
1692e(3) when a "dunning letter came from a paralegal rather than an attorney."

1 confusing manner, and is evaluated from the perspective of the unsophisticated debtor.
 2 Sims v. GC Services, L.P., 445 F.3d 959, 964 (7th Cir. 2006). “A debt collection
 3 notice is overshadowing or contradictory if it fails to convey the validation
 4 information clearly and effectively and thereby makes the least sophisticated
 5 consumer uncertain as to her rights.” Gervais v. Riddle and Associates, P.C., 479
 6 F.Supp.2d 270, 277 (D.Conn. 2007).

7 As discussed above, Defendants’ identification in the caption of Chase Bank
 8 USA, N.A. as the creditor could not have been more clear. In fact, this is the first
 9 language Plaintiff would have seen after reading her own name and address..

10 For purposes of reviewing a collection letter for compliance with the validation
 11 notice requirements of the FDCPA, the hypothetical unsophisticated debtor is
 12 regarded as “uninformed, naive, or trusting, but *nonetheless is considered to have a*
 13 *rudimentary knowledge about the financial world and is capable of making basic*
 14 *logical deductions and inferences.*” Id., quoting Fields v. Wilber Law Firm, P.C.,
 15 383 F.3D 562, 564 (7th Cir. 2004). [emphasis added]

16 Further, the unsophisticated debtor standard is an objective one, meaning that “a
 17 collection letter *cannot be confusing as a matter of law or fact ‘unless a significant*
 18 *fraction of the population would be similarly misled.’*” Sims v. GC Services, L.P.,
 19 445 F.3d 959, 964 (7th Cir. 2006), quoting Durkin v. Equifax Check Services, Inc.,
 20 406 F.3d 410, 414-15 (7th Cir. 2005).

21 Incredibly, Plaintiff claims that the second paragraph of Defendants’ letter
 22 confused her as to the identity of the creditor. The second paragraph reads:

23 “The original contract you entered into with
 24 Chase Bank USA, N.A. or with the predecessor
 25 or assignor of Chase Bank USA, N.A., provides
 26 for the resolution of claims or disputes by
 27 binding arbitration.”

28 This language pertains to the arbitration clause, and has nothing to do with the

1 creditor to whom the debt is owed. This language does not change or alter the fact
 2 that "Chase Bank USA, N.A." was clearly identified as the creditor at the outset of the
 3 letter. Simply put, Defendants' collection notice is not contradictory or confusing as
 4 to the name of the creditor to whom the debt is owed.

5
 6 **VI. DEFENDANTS DID NOT THREATEN LEGAL ACTION THAT**
 7 **CANNOT BE TAKEN**

8 Plaintiff alleges that Defendants threatened legal action that could not be taken
 9 in violation of 15 U.S.C. §1692e(5). *Complaint*, ¶20. Plaintiff does not, and cannot,
 10 cite to language in Defendants' letter which supports her claim.

11 The letter completely supports Defendants' position and provides: "If we are
 12 unable to reach satisfactory arrangements, the *filing of an arbitration claim will be*
 13 *evaluated*. If an arbitration award in favor of Chase Bank USA, N.A. is granted, we
 14 intend to pursue legal remedies available pursuant to the award." [emphasis added]
 15 Defendants never represented that litigation was imminent. On the contrary, the
 16 language clearly states that Defendants "[*would*] *evaluate*" the *possibility* of filing an
 17 arbitration claim - *if and only if* Defendants were not able to resolve the debt with
 18 Plaintiff. It is further obvious that no litigation was imminent because Plaintiff was
 19 given "30 days after receiving this notice" to "dispute the validity of this debt." In
 20 other words, no litigation would be initiated unless it was determined that Defendants
 21 were unable to resolve the debt with Plaintiff.

22 Similarly, Plaintiff's contention in this case that Defendants could not have
 23 taken any legal action in California is equally unpersuasive. Had Defendants decided
 24 to take any legal action in California, they could have retained local counsel to pursue
 25 the debt in California. The fact that Defendants are not licensed to practice in
 26 California does not indicate that Defendant threatened legal action that could not be
 27 taken in violation of 15 U.S.C. §1692e(5). Accordingly, Plaintiff's claim must fail.
 28

1 **VII. CONCLUSION.**

2 It would be a bizarre result indeed if, by communicating truthful and accurate
3 information to the debtor in an attempt to settle a debt for less than the amount due,
4 Defendants could be held liable for using a false, deceptive and misleading
5 communication or means to collect a debt.


6 Under Plaintiff's theory, honest debt collectors like Defendants, who are willing
7 to accept less than full payment, would be discouraged from transmitting accurate
8 information about settlement to debtors. Plaintiff's theory undermines settlements and
9 conflicts with the very purpose of the FDCPA. Therefore, it must be rejected.

10 It would be equally bizarre if Defendants could be held liable for sending a
11 letter on its letterhead, which was not signed by an attorney, and did not purport to be
12 from an attorney. Not only would such a result be bizarre, but it would be contrary to
13 the FDCPA and all applicable legal precedent.

14 Defendants respectfully request that this Court issue an Order, pursuant to Rule
15 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Complaint, with
16 prejudice, for failure to state a claim upon which relief may be granted.

17
18 DATED: August 13, 2007

STEPHEN H. TURNER, Esq.
ALISHA M. LEE, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP

19
20
21 By 
22 Stephen H. Turner, Esq.
23 Alisha M. Lee, Esq.
24 Attorneys for Defendant
25 MANN BRACKEN, LLC
26
27
28

CERTIFICATE OF SERVICE

Zenaida E. Quicho vs. Mann Bracken, LLC, et al.
U.S.D.C. Case No. CASE NO. C 07 3478 BZ

I certify that on the 13th day of August, 2007, I electronically transmitted the foregoing document **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS** to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ZENAIDA E. QUICHO, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

MANN BRACKEN, LLC; DOUG
MANN; EDWARD REILLY,

Defendants.

CASE NO. C 07 3478 BZ

**[PROPOSED] ORDER RE:
DEFENDANTS' MOTION TO
DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED**

[F.R.C.P. Rule 12(b)(6)]

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The motion of Defendants MANN BRACKEN, LLC, DOUG MANN and EDWARD REILLY (collectively, "Defendants") for an Order dismissing the Complaint of Plaintiff ZENAIDA E. QUICHO ("Plaintiff") with prejudice pursuant to Federal Rules of Civil Procedure Rule 12(b)(6), came on regularly for hearing on September 19, 2007, at 10:00 a.m. in Courtroom "G" of the above-entitled Court.

After full consideration of the evidence, points and authorities submitted by the parties, and oral arguments at the hearing, the Court finds that Plaintiff ZENAIDA E. QUICHO has failed to state a claim upon which relief can be granted. F.R.C.P. Rule

1 12(b)(6).

2 **IT IS HEREBY ORDERED THAT:**

3 1. Defendants' Motion to Dismiss Plaintiff's Complaint for failure to state
4 a claim upon which relief can be granted, filed pursuant to Federal Rules of Civil
5 Procedure Rule 12(b)(6), is GRANTED.

6 2. Plaintiff's Complaint is dismissed with prejudice pursuant to Federal
7 Rules of Civil Procedure Rule 12(b)(6).

8
9 DATED: _____

_____ Honorable Bernard Zimmerman

CERTIFICATE OF SERVICE

Zenaida E. Quicho vs. Mann Bracken, LLC, et al.
U.S.D.C. Case No. CASE NO. C 07 3478 BZ

I certify that on the 13th day of August, 2007, I electronically transmitted the foregoing document **[PROPOSED] ORDER RE: DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** to the Clerk's office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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